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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/612,643

07/01/2003

Aharon Laufer

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EXAMINER

CUMARASEGARAN, VERN

ART UNIT

PAPER NUMBER

3609

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No. 10/612,643	Applicant(s) LAUFER, AHARON	
	Examiner Vern Cumarasegaran	Art Unit 3609	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☐ Claim(s) 1-26 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on 7/1/2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 101***

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Regarding claims 1-26, the application does not meet the useful, concrete, and tangible test for eligibility for patenting. Although the invention, as claimed, is considered useful and concrete, the invention, as recited, sets forth nothing more than a general "business model" which amounts to the recitation of an abstract idea – rather than an invention which has been reduced to practice.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 2-5, 16-19, 24-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown (Brown, Carolyn Spencer: "Time shares get class. Yes, time shares.; Big name hotels, more options are reinventing the industry," Washington Post, pg. E01 [Final Ed], April 29, 2001 (hereinafter "Brown")) in view of the applicant's admitted prior art (at paragraph 5, line 3).
4. Regarding claims 1, 2, 16 and 24-26, Brown shows a method for operating a combined hotel/limited timeshare facility in an area having peak demand

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periods and non-peak demand periods (paragraph 20, line 3); operating the hotel/limited timeshare facility as a combined hotel/timeshare facility (paragraph 12, lines 1-3).

The applicant acknowledges that the expenses of selling non-peak period timeshares is much higher compared to selling peak period timeshares (see "Background" at paragraph 5, line 3).

Although Brown does not explicitly show selling a set of peak period timeshares for intervals corresponding to at least some of the peak demand periods, it would have been obvious to one of ordinary skill in the art to modify Brown and limit the timeshare intervals to peak periods if it turned out that operating the facility as only a hotel during non-peak period is more profitable given the high marketing expenses of selling non-peak timeshares.

5. With reference to claims 3-5, Brown in view of the applicant's admitted prior art does not expressly show specific percentage rates. However, the specific percentage rate does not functionally affect the generic method for operating a combined hotel/limited timeshare facility. Consequently said specific percentage rate qualifies as nonfunctional descriptive material and will be given little patentable weight (703 F.2d 1381, 1385, 217 USPQ 401, 403-04 (Fed. Cir. 1983)).

6. As to claim 17, Brown does not expressly show selling before operating begins. However, since pre-selling is old and well known in the art, it would have been obvious to one of ordinary skill in the art to modify Brown and pre-sell timeshares in order to recoup invested capital early as possible.

7. As to claims 18 and 19, the Examiner interprets the sale of timeshares being valid for a certain period of time as right to use sale of timeshares. Brown does not expressly show right to use of timeshares. However, since right to use sale of properties, including timeshares, is old and well known in the art, it would have been obvious to one of ordinary skill in the art to modify Brown and sell right to use timeshares that are valid for between three and ten years and timeshares that are valid for between three years and perpetuity especially if deed rights of timeshares are not permissible in a certain area.

8. Claims 8-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown and Applicant's admitted prior art as applied to claim 1 above, and further in view of San Luis survey ([www.boe.gov/proptaxes/pdf/40apsrhist.pdf](http://www.boe.gov/proptaxes/pdf/40apsrhist.pdf)).

Although Brown shows the presence peak and non-peak periods that hotel/timeshare facilities are exposed to, he does not expressly show that these may be caused by regularly recurring events.

The San Luis survey shows that timeshares are home to a plurality of regularly recurring events during peak periods (page 22, last paragraph) where skiers enjoy the winter snow every year. The recurring event of skiing can be interpreted as a sporting event. It would have been obvious to one of ordinary skill in the art to modify the teachings of Brown and the Applicant's admitted prior art and sell only to a target group of people such as those who come to ski at the resort in order to reduce marketing and prospecting costs.

Moreover, claims 8-10 refer to targeting a certain group to sell timeshares

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and since target marketing is old and well known, it would have been obvious to one of ordinary skill in the art to modify Brown and incorporate target marketing as a strategy in selling the timeshares.

9. As to claims 20 - 23, Brown explicitly teaches these claims. Such as timeshares being associated with a single unit of the facility (paragraph 7, line 1); wherein the single unit is a hotel room (paragraph 18, line 1); and timeshares being sold as points to a vacation club (paragraph 20).

10. Claims 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Morris (Morris, Jerry: "Timesharing: A different way to vacation." Boston Globe. Page 1. March 27, 1983. (hereinafter "Morris")) in view of the skill level of one in the art. Morris shows a combined hotel/timeshare facility limiting timeshare purchases to 25 weeks (paragraph 23, line 1) where presumably the owner would be able make a higher profits during the remaining weeks of the year. It would have been obvious to one of ordinary skill in the art to modify Morris and allow the duration of intervals to be less than three days and sell non-contiguous intervals of peak-period timeshares since by having more flexible buying options would allow a greater number of buyers to purchase timeshares at the facility.

***Claim Rejections - 35 USC § 112***

11. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

12. Claims 1, 24, 25, 26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the

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subject matter which applicant regards as the invention. It is unclear as to what activities do the terms "operating" and "attempting to sell" encompass. One of ordinary skill in the art is not reasonably apprised of the specific activities to avoid in order to avoid infringement of these claims. The claims are interpreted as best understood by the examiner.

Additionally, it is unclear what the elements "yearly sales and marketing expenses related to sales attempts for non-peak period timeshares of similar duration and quality as the peak period timeshares being less than the yearly peak period expenses" and "attempting to sell a set of peak period timeshares for intervals corresponding to at least some of the peak demand periods, yearly sales and marketing expenses related to the sales attempts for the set of peak period timeshares being defined as yearly peak period expenses" are referring to.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vern Cumarasegaran whose telephone number is 571-270-3273. The examiner can normally be reached on Monday - Friday 7:30am-5:00pm ; alt Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven McAllister can be reached on 571-272-6785. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

VC



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